

New Bankruptcy Tools Available for the Small Farmer

- Family Farmer Relief Act of 2019
- Small Business Reorganization Act of 2019



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Family Farmer Relief Act of 2019

- Increased the aggregate debt limit required to qualify for a Chapter 12 from \$4,153,150 to \$10,000,000.
 - Why? Size of farms have increased since Chapter 12 was created
 - Farm loans with “major” or “severe” repayment problems hit a 20-year high in August 2019
 - Goal is to make Chapter 12 an option for more farmers
 - Chapter 12 is preferable to traditional Chapter 11 since it is more streamlined, less complicated, and less expensive than a chapter 11.

Small Business Reorganization Act of 2019 (SBRA)

- Found in 11 U.S.C.A. §§ 1181 – 1195
- Took effect on February 19, 2020
- Covered those with debts up to \$2,725,625 (more on that in a minute)
- Attempts to provide the reorganization benefits of a Chapter 11 to small-business debtors



Business Debtor

Benefits of a Chapter 11, Subchapter V

Reduced Expenses:

- Eliminates many administrative expenses (i.e. no Disclosure Statement required)
- No UST fees required 28 U.S.C. § 1930(a)(6)(A)
- No committee of unsecured creditors required 11 U.S.C. §§ 1102(a)(3), 1181(b)



Benefits of a Chapter 11, Subchapter V

Easier Retention of Professionals

As long as professionals hold pre-petition claims of <\$10k, they can be employed by the debtor. 11 U.S.C. § 1195.



Benefits of a Chapter 11, Subchapter V

Only the Debtor Can File a Plan



- Creditors and interested parties cannot submit competing plans of reorganization. 11 U.S.C. § 1189(a)
- No separate disclosure statement is required. 11 U.S.C. § 1181(b)

Benefits of a Chapter 11, Subchapter V

Absolute Priority Rule is NOT a Barrier to Confirmation!



What is the Absolute Priority Rule???
11 U.S.C. § 1129(b)(2)(B)(ii)

Benefits of a Chapter 11, Subchapter V

Voting Benefits!

- No requirement that the debtor receive the acceptance of at least 1 impaired class. 11 U.S.C. §§ 1129(a)(10) and 1191(b)
- Cramdown Plan may be approved with no class of creditors supporting. 11 U.S.C. § 1191(b)



Benefits of a Chapter 11, Subchapter V

Miscellaneous Benefits

- Modification of certain mortgages on debtor's personal residence. 11 U.S.C. § 1190(3)
- Only the debtor can modify the Plan post-confirmation. 11 U.S.C. § 1193
- Allows the debtor to obtain a discharge on the effective date of the plan. 11 U.S.C. § 1192
- Allows administrative expenses to be stretched over the life of the plan. 11 U.S.C. § 1191
- Permits application of automatic stay for "serial filer" (filed within 2 years of confirmed small business case. 11 U.S.C. § 362(n)(1)
- Debtor can use the Subchapter V to cramdown a secured personal motor vehicle loan. 11 U.S.C. §§ 1190, 1191, 1123

Drawbacks of Chapter 11, Subchapter V



Primary Drawbacks of Chapter 11, Subchapter V:

- Limited eligibility
- Limitations on use of cash collateral
- Mandatory appointment of a trustee
- Mandatory status conference (within 60 days of filing petition)
- Accelerated Confirmation Schedule – 90 days!
- Disposable income MUST go towards Plan
- Plan must have remedies for defaults

Qualifying for Chapter 11, Subchapter V

Eligibility

- The debtor must be a person or entity engaged in commercial or business activity with aggregate secured and unsecured debts of \$2,725,625 (raised to \$7,500,000 for March, 2020 through March, 2021). 11 U.S.C. § 101(51D)
- 50% or more of pre-petition debts must derive from **commercial or business activities**.
- Not for single asset real estate debtors.



Role of Ch. 11, Sub. V Trustee

SBRA Trustee's
duty is to:

“facilitate the
development
of a consensual
plan of
reorganization”



Filing Your First Chapter 11, Sub V

Looks a Lot Like an 11



- File petition and schedules.
- Elect for Subchapter V on petition.
- File a copy of the business' most-recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or a sworn statement that such documents do not exist.

Chapter 11, Subchapter V Timeline

The Subchapter V's Blessing and Curse



Personal Takeaways

Bankruptcy is a blunt and expensive tool, but very powerful



Questions?



Case Example

Chapter 11 Farm Disclosure Statement and Plan

